

**SCHMEISER, OLSEN & WATTS LLP****PATENTS, TRADEMARKS & COPYRIGHTS****18 E. UNIVERSITY DR., STE. 101****MESA, ARIZONA 85201-5946**

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DAVID E. ALLRED †****OF COUNSEL****CHARLES T. WATTS ††****\* OTHER THAN ARIZONA BAR  
† PATENT AGENT  
†† RETIRED****FACSIMILE COVER SHEET****TO: Sherry Brinkley****COMPANY: PTO****DESTINATION FACSIMILE NUMBER: 703-308-6916****FROM: David Allred****DATE: October 22, 2003****NUMBER OF PAGES: 20  
(DOES NOT INCLUDE COVER)****MESSAGE: Confirmation of Interference filed is attached for 09/578,001****IF YOU DO NOT RECEIVE ALL OF THE TRANSMITTED PAGES, PLEASE  
CALL (480) 655-0073. THANK YOU.****CLIENT/MATTER: ROWL-9955**

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OCT 22 2003  
PETITIONS OFFICE**

#25

Practitioner's Docket No. ROWL-9955

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: McClain et al.

Serial No.: 09/578,001

Group No.: 1755

Filed: May 24, 2000

Examiner: Elizabeth D. Wood

For: METHOD AND APPARATUS FOR PRODUCING AN AQUEOUS PAINT COMPOSITION FROM A PLURALITY OF PREMIXED COMPOSITIONS

Date of mailing "Notice of Allowance and

Base Issue Fee Due" July 28, 2003

Batch No. \_\_\_\_\_

Mail Stop 313(c)  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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PETITIONS OFFICE

**NOTE:** Petitions to withdraw patent applications from issue (37 C.F.R. 1.313, M.P.E.P. § 1308) are decided by the Deputy Assistant Commissioner of Patents, M.P.E.P. § 1002(b). Letters requesting that the application be withdrawn from issue for purposes of interference with a patent (see M.P.E.P. § 1101.02(f)) require the approval of the Group Director, M.P.E.P. § 1003.

**WARNING:** Papers requesting that an application be withdrawn from issue after the issue fee is paid, and any papers associated with the petition, including papers necessary for filing a continuing application, may be addressed as above or be hand-carried to the Office of Petitions, at Two Crystal Park, Suite 913, April 14, 1993, 1150 T.M.O.G. 27-28.

## PETITION FOR WITHDRAWAL FROM ISSUE (37 C.F.R. 1.313)

## PETITION

1. Applicant hereby petitions for the immediate withdrawal of this application from issue under either 37 C.F.R. 1.313(c).

## CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. 1.8(a))

I hereby certify that, on the date shown below, this correspondence is being:

## MAILING

X deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, Alexandria, VA 22313.

## FACSIMILE

☐ transmitted by facsimile to the Patent and Trademark Office.

Date: October 7, 2003

Heather Clark  
Signature

Heather Clark  
(type or print name of person certifying)

**PATENT ISSUE FEE**

2. The issue fee for this case

*(complete (a) or (b))*

- (a) ☐ has NOT been paid, but is due for payment on \_\_\_\_\_.
- (b) ☒ has been paid on August 8, 2003.

*(complete the following, if known)*

This application is scheduled to

- ☐ issue on \_\_\_\_\_
- ☐ as patent \_\_\_\_\_.

**NOTE:** "While the specific time period varies, an allowed application generally receives a patent number and issue date within two weeks after the issue fee is received in the Patent and Trademark Office." M.P.E.P. 1308.

**REASON(S) FOR WITHDRAWAL REQUEST**

**NOTE:** "When the issue fee has been paid, the application will not be withdrawn from issue for any reason except: (1) A mistake on the part of the Office; (2) A violation of § 1.56, or illegality in the application; (3) Unpatentability of one or more claims; or (4) For interference." 37 C.F.R. 1.313(b).

3. The reason for the request for withdrawal from issue is:

*(check applicable item(s) below)*

- (a) ☐ there has been a mistake on the part of the Office.
- (b) ☐ there has been a violation of Section 1.56, or illegality in the application.
- (c) ☐ one or more of the claims are unpatentable.
- (d) ☒ for purposes of declaring an interference.
- (e) ☐ other.

Further details as to the reason(s) for this withdrawal request are set forth on the attached 1 sheet(s).

**PETITION FEES**

*NOTE: The fee need only be paid, if the reason for withdrawal is not the fault of the Office. 37 C.F.R. 1.313(a).*

4. The petition fee (37 C.F.R. 1.17(i)) is paid as follows:

- ☒ Enclosed is a check in the sum of \$130.00.  
☐ Charge Account 19-0513 the sum of \$130.00.  
A duplicate of this petition is attached.

Reg. No.: 42,342

Tel. No.: (480) 655-0073

Customer No.: ROWL-9955

  
Signature of Practitioner

Kenneth C. Booth  
(type or print name of practitioner)

18 E. University Drive, Suite 101

Mesa, Arizona 85201-5946

Plus 1 Added Page

FAX RECEIVED

PETITION FOR WITHDRAWAL FROM ISSUE (37 C.F.R. 1.313) OCT 22 2003

ADDED PAGE FOR REASON(S)

PETITIONS OFFICE

Applicants request immediate withdrawal of the present application from issue under 37 C.F.R. 1.313(c) even though the issue fee has been paid because Applicants were not aware that an interference should have been provoked with interfering claims. Due to information, noted below, that has recently come to Applicants' attention, withdrawal of the present application from issue by the Patent Office under the initiative of the Applicants is hereby requested.

1. Applicant became aware of U.S. Patent No. 6,531,537 B2 having claims to the same invention as the present application.

A. The patent was issued March 11, 2003 (less than a year ago as required by 35 USC 135(a))

B. The present application was filed on May 24, 2000, before the pre-grant publication of the patent, which occurred on January 10, 2002. (Thus, the requirements of 35 USC 135(b) do not pertain to this application.)

C. Unless an Interference is provoked between the present application, with its May 24, 2000 filing date, and the issued claims of U.S. Patent No. 6,531,537 B2, Applicants will be significantly limited in their ability to provoke an interference with that patent because 35 USC 135(b) will impose significant restrictions on the claims that can be made in any other related application.

2. The issued claims in the patent could have been claimed in the present application.

A. Although Applicants have an earlier priority date by more than 1 year for the subject matter claimed by Patent No. 6,531,537 B2, the claims of the patent provide rights in that invention to another. Applicants' disclosure, though it uses slightly different language, discloses the same examples for its components and those in the issued patent.

3. There are no other related application(s) in which the patent claims could be presented without changing the thrust of those related applications. Furthermore, Applicants may be restricted from presentation of claims having the same or substantially the same subject matter in any related application under 35 USC 135(b) because all such related applications were filed or will be filed after the publication date of the patent. Alternatively stated, the present application is the only application that can avoid the requirement of 35 USC 135(b) by virtue of its filing date. In view of the nature and scope of the patent claims having an effective filing date more than one year after the effective filing date of the same subject matter in Applicants' application, Applicants need to provoke an interference in the present application with its 5/24/00 filing date.

Hence, Applicants hereby petition the commissioner to withdraw the present application from issue.

*(use additional pages, if necessary)*

Added Page 1

(Petition for Withdrawal from Issue (37 C.F.R. 1.313)—page 4 of 3)

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 DAVID E. ALLRED †

OF COUNSEL

CHARLES T. WATTS ††

\* OTHER THAN ARIZONA BAR  
 † PATENT AGENT  
 †† RETIRED

October 22, 2003

Ms. Sherry Brinkley  
 United States Patent Office  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Via facsimile: 703-308-6916

FAX RECEIVED  
 OCT 22 2003

Re: Confirmation of Interference filed for Serial No.: 09/578,001  
 Our File No.: ROWL-9955

PETITIONS OFFICE

Dear Ms. Sherry Brinkley:

Per your instructions, the following sheets include copies of items 1, 2, 3, 6, 7, and 8 listed on the postcard receipt as evidence of the paper filed October 7, 2003. The first several pages of item 4 "interference", (which should have been listed as "amendment"), are also included for clarification. The entire amendment and exhibits are not being faxed since they comprise approximately 200 pages and are in the possession of the Office, as evidenced by the post card receipt.

Based on the accompanying copies it is requested that the above referenced application serial No. 09/578,001 be immediately withdrawn from issue in order to avoid publication and issuance on the scheduled date October 28, 2003 (next Tuesday). (The fact that we received an Issue Notification indicating the issue date and serial number appears to be due to an error on the part of the Publication Division of the Office in that they did not forward the petition to the Office of Petitions.) Therefore, withdrawal of the above referenced application from issue is requested on the basis of the copies included herewith.

Very truly yours,

SCHMEISER, OLSEN &amp; WATTS



David E. Allred  
 Reg. No.: 47,254

DEA/hc  
 Attachments

Docket No.: ROWL-9955

Inventor: McClain Examiner: Wood, E.Serial No: 09/578,001 Filed On: 05/24/00 Art Unit: 1755

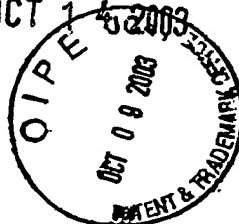
Law Firm: Schmeiser, Olsen &amp; Watts LLP

Title: **METHOD AND APPARATUS FOR PRODUCING  
AN AQUEOUS PAINT COMPOSITION FROM A  
PLURALITY OF PREMIXED COMPOSITIONS**

ENCLOSED PLEASE FIND:

1. Postcard;
2. Transmittal Letter;
3. Petition for Withdrawal From Issue;
4. Interference;
5. Exhibits;
6. Associate Power of Attorney(s) forms;
7. Request for Continued Examination; and
8. Check enclosed for \$3,133.00 total fees.

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Sent via First Class Mail on October 7, 2003.

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PETITIONS OFFICE

Docket No.: ROWL-9955

Inventor: McClain Examiner: Wood, E.  
Serial No: 09/578,001 Filed On: 05/24/00 Art Unit: 1755  
Law Firm: Schmeiser, Olsen & Watts LLP  
Title: **METHOD AND APPARATUS FOR PRODUCING  
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7. Request for Continued Examination; and
8. Check enclosed for \$3,133.00 total fees.

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Sent via First Class Mail on October 7, 2003.**SCHMEISER, OLSEN & WATTS LLP**

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MESA, ARIZONA 85201-5946  
(480) 656-0073

NORTHERN TRUST BANK OF AZ, N.A.  
1525 SOUTH GREENFIELD ROAD  
MESA, ARIZONA 85206

91-521/1221

4939

\*\*\*\*\* Three Thousand One Hundred Thirty Three &amp; 00/100 Dollars

DATE

10/07/03

AMOUNT

\*\*\*\*\*3,133.00

**Commissioner for Patents**

PAY  
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OF

AUTHORIZED SIGNATURE

⑈004939⑈ ⑆122105210⑆

⑈1611005171⑈



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty. Docket No.: ROWL-9955  
P.K. OFFICE

## Response Transmittal

In re application of: McClain

Serial No.: 09/578,001

Filed: 05/24/00

For: METHOD AND APPARATUS FOR PRODUCING AN  
AQUEOUS PAINT COMPOSITION FROM A  
PLURALITY OF PREMIXED COMPOSITIONSMail Stop 313(c)  
Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Transmitted herewith for filing in the above-identified Application is a:

1. Petition for Withdrawal from Issue
2. Interference;
3. Exhibits;
4. Associate Power of Attorney(s) forms; and
5. IDS with copies of cited art.

FAX RECEIVED  
OCT 22 2003☐ CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

☒ CERTIFICATE OF MAILING

I hereby certify that I am depositing the enclosed or attached correspondence with the United States Postal Service as first class mail in an envelope addressed to Mail Stop 313(c), Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450,

on October 7, 2003

*Heather Clark*  
Heather Clark☒ The fee has been calculated as shown below:

PETITIONS OFFICE

	(Col. 1)		(Col. 2)		(Col. 3)
CLAIMS REMAINING AFTER AMENDMENT			HIGHEST NO. PREVIOUSLY PAID FOR		PRESENT EXTRA
TOTAL 241		MINUS	60	=	181
INDEPENDENT 29		MINUS	6	=	23
<input checked="" type="checkbox"/> PETITION TO WITHDRAWAL FROM ISSUE					
<input checked="" type="checkbox"/> REQUEST FOR CONTINUED EXAMINATION					

Small Entity	
RATE	ADDITIONAL FEE
x \$ 9.00=	\$1,629.00
x \$43.00=	\$ 989.00
\$130.00	\$ 130.00
\$385.00	\$ 385.00
Total	\$ 3,133.00

☒ ☒ A check in the amount of \$3,133.00 to cover fees is enclosed.☒ The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 19-0513. A duplicate copy of this sheet is enclosed.☒ ☒ Any additional filing fees required under 37 C.F.R. §1.16.☒ ☒ Any patent application processing fees under 37 C.F.R. §1.17.

Date: October 7, 2003

Respectfully submitted,

Schmeiser, Olsen & Watts LLP  
18 East University Drive, #101  
Mesa, Arizona 85201  
Tel: (480) 655-0073By *Kenneth C. Booth*  
Kenneth C. Booth  
Registration No.: 42,342